

COMMITTEE ON BANKING AND INSURANCE

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2333

(Reference to printed bill)

Page 1, between lines 1 and 2, insert:

"Section 1. Section 14-1201, Arizona Revised Statutes, is amended to read:

14-1201. Definitions

In this title, unless the context otherwise requires:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, a person who is authorized to make decisions concerning another person's health care and a person who is authorized to make decisions for another person under a natural death act.

2. "Application" means a written request to the registrar for an order of informal probate or appointment under chapter 3, article 3 of this title.

3. "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer. As it relates to a charitable trust, beneficiary includes any person entitled to enforce the trust. As it relates to a beneficiary of a beneficiary designation, beneficiary refers to a beneficiary of an insurance or annuity policy, an account with pay on death designation, a security registered in beneficiary form or a pension, profit sharing, retirement or similar benefit plan, or any other nonprobate transfer at death. As it relates to a beneficiary designated in a governing instrument, beneficiary includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee or taker in default of a power of appointment and a person in whose favor a power of attorney or a power held in any person, fiduciary or representative capacity is exercised.

4. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with pay on death designation, of a security registered in beneficiary form or of a pension, profit sharing, retirement or similar benefit plan, or any other nonprobate transfer at death.

1 5. "Child" includes a person who is entitled to take as a child under
2 this title by intestate succession from the parent whose relationship is
3 involved. Child excludes a person who is only a stepchild, a foster child, a
4 grandchild or a more remote descendant.

5 6. "Claims", in respect to estates of decedents and protected persons,
6 includes liabilities of the decedent or the protected person, whether arising
7 in contract, in tort or otherwise, and liabilities of the estate that arise
8 at or after the death of the decedent or after the appointment of a
9 conservator, including funeral expenses and expenses of administration.
10 Claims do not include estate or inheritance taxes or demands or disputes
11 regarding title of a decedent or a protected person to specific assets
12 alleged to be included in the estate.

13 7. "Community property" means that property of a husband and wife that
14 is acquired during the marriage and that is community property as prescribed
15 in section 25-211.

16 8. "Conservator" means a person who is appointed by a court to manage
17 the estate of a protected person.

18 9. "Court" means the superior court.

19 10. "Dependent child" means a minor child who the decedent was
20 obligated to support or an adult child who was in fact being supported by the
21 decedent at the time of the decedent's death.

22 11. "Descendant" means all of the decedent's descendants of all
23 generations, with the relationship of parent and child at each generation.

24 12. "Devise", when used as a noun, means a testamentary disposition of
25 real or personal property and, when used as a verb, means to dispose of real
26 or personal property by will.

27 13. "Devisee" means a person designated in a will to receive a devise.
28 For the purposes of chapter 3 of this title, in the case of a devise to an
29 existing trust or trustee, or to a trustee on trust described by will, the
30 trust or trustee is the devisee and the beneficiaries are not devisees.

31 14. "Disability" means cause for a protective order as described in
32 section 14-5401.

1 15. "Distributee" means any person who has received property of a
2 decedent from that person's personal representative other than as a creditor
3 or purchaser. Distributee includes a testamentary trustee only to the extent
4 of distributed assets or increment that remains in that person's hands. A
5 beneficiary of a testamentary trust to whom the trustee has distributed
6 property received from a personal representative is a distributee of the
7 personal representative. For the purposes of this paragraph, "testamentary
8 trustee" includes a trustee to whom assets are transferred by will, to the
9 extent of the devised assets.

10 16. "Estate" includes the property of the decedent, trust or other
11 person whose affairs are subject to this title as originally constituted and
12 as it exists from time to time during administration. As it relates to a
13 spouse, the estate includes only the separate property and the share of the
14 community property belonging to the decedent or person whose affairs are
15 subject to this title.

16 17. "Exempt property" means that property of a decedent's estate that
17 is described in section 14-2403.

18 18. "Fiduciary" includes a personal representative, guardian,
19 conservator and trustee.

20 19. "Foreign personal representative" means a personal representative
21 appointed by another jurisdiction.

22 20. "Formal proceedings" means proceedings conducted before a judge
23 with notice to interested persons.

24 21. "Governing instrument" means a deed, will, trust, insurance or
25 annuity policy, account with pay on death designation, security registered in
26 beneficiary form, pension, profit sharing, retirement or similar benefit
27 plan, instrument creating or exercising a power of appointment or a power of
28 attorney or a dispositive, appointive or nominative instrument of any similar
29 type.

30 22. "Guardian" means a person who has qualified as a guardian of a
31 minor or incapacitated person pursuant to testamentary or court appointment
32 but excludes a person who is merely a guardian ad litem.

1 23. "Heirs", except as controlled by section 14-2711, means persons,
2 including the surviving spouse and the state, who are entitled under the
3 statutes of intestate succession to the property of a decedent.

4 24. "Incapacitated person" has the same meaning prescribed in section
5 14-5101.

6 25. "Informal proceedings" means those proceedings conducted without
7 notice to interested persons by an officer of the court acting as a registrar
8 for probate of a will or appointment of a personal representative.

9 26. "Interested person" includes any trustee, heir, devisee, child,
10 spouse, creditor, beneficiary, **PERSON HOLDING A POWER OF APPOINTMENT** and
11 other person who has a property right in or claim against a trust estate or
12 the estate of a decedent, ward or protected person. Interested person also
13 includes a person who has priority for appointment as personal representative
14 and other fiduciaries representing interested persons. Interested person, as
15 the term relates to particular persons, may vary from time to time and must
16 be determined according to the particular purposes of, and matter involved
17 in, any proceeding.

18 27. "Issue" of a person means descendant as defined in this section.

19 28. "Joint tenants with the right of survivorship" and "community
20 property with the right of survivorship" includes co-owners of property held
21 under circumstances that entitle one or more to the whole of the property on
22 the death of the other or others but excludes forms of co-ownership
23 registration in which the underlying ownership of each party is in proportion
24 to that party's contribution.

25 29. "Lease" includes any oil, gas or other mineral lease.

26 30. "Letters" includes letters testamentary, letters of guardianship,
27 letters of administration and letters of conservatorship.

28 31. "Minor" means a person who is under eighteen years of age.

29 32. "Mortgage" means any conveyance, agreement or arrangement in which
30 property is encumbered or used as security. Mortgage does not include leases
31 or easements.

1 33. "Nonresident decedent" means a decedent who was domiciled in
2 another jurisdiction at the time of the decedent's death.

3 34. "Organization" means a corporation, limited liability company,
4 business trust, estate, trust, partnership, joint venture, association,
5 government or governmental subdivision or agency or any other legal or
6 commercial entity.

7 35. "Parent" includes any person entitled to take, or who would be
8 entitled to take if the child died without a will, as a parent under this
9 title by intestate succession from the child whose relationship is in
10 question and excludes any person who is only a stepparent, foster parent or
11 grandparent.

12 36. "Payor" means a trustee, insurer, business entity, employer,
13 government, governmental agency or subdivision or any other person who is
14 authorized or obligated by law or a governing instrument to make payments.

15 37. "Person" means ~~a person~~ AN INDIVIDUAL or an organization.

16 38. "Personal representative" includes executor, administrator,
17 successor personal representative, special administrator and persons who
18 perform substantially the same function under the law governing their status.
19 A general personal representative excludes a special administrator.

20 39. "Petition" means a written request to the court for an order after
21 notice.

22 40. "Proceeding" includes action at law and suit in equity.

23 41. "Property" has the same meaning prescribed in section 14-10103.

24 42. "Protected person" has the same meaning prescribed in section
25 14-5101.

26 43. "Protective proceeding" has the same meaning prescribed in section
27 14-5101.

28 44. "Registrar" means the official of the court designated to perform
29 the functions of registrar as provided in section 14-1307.

30 45. "Security" includes any note, stock, treasury stock, bond,
31 debenture, evidence of indebtedness, certificate of interest or participation
32 in an oil, gas or mining title or lease or in payments out of production

1 under that title or lease, collateral trust certificate, transferable share
2 or voting trust certificate and, in general, includes any interest or
3 instrument commonly known as a security, or any certificate of interest or
4 participation, any temporary or interim certificate, receipt or certificate
5 of deposit for, or any warrant or right to subscribe to or purchase, any of
6 these securities.

7 46. "Separate property" means that property of a husband or wife that
8 is the spouse's separate property as defined in section 25-213.

9 47. "Settlement", in reference to a decedent's estate, includes the
10 full process of administration, distribution and closing.

11 48. "Special administrator" means a personal representative as
12 described by sections 14-3614 through 14-3618.

13 49. "State" has the same meaning prescribed in section 14-10103.

14 50. "Successor personal representative" means a personal
15 representative, other than a special administrator, who is appointed to
16 succeed a previously appointed personal representative.

17 51. "Successors" means persons, other than creditors, who are entitled
18 to property of a decedent under a will or this title.

19 52. "Supervised administration" refers to the proceedings described in
20 chapter 3, article 5 of this title.

21 53. "Survive" means that a person has neither predeceased an event,
22 including the death of another person, nor is deemed to have predeceased an
23 event under section 14-2104 or 14-2702.

24 54. "Testacy proceeding" means a proceeding to establish a will or
25 determine intestacy.

26 55. "Testator" includes a person of either sex.

27 56. "Trust" includes an express trust, private or charitable, with any
28 additions, wherever and however created. Trust also includes a trust created
29 or determined by judgment or decree under which the trust is to be
30 administered in the manner of an express trust. Trust excludes other
31 constructive trusts and excludes resulting trusts, conservatorship, personal
32 representatives, trust accounts, custodial arrangements pursuant to chapter

1 7, article 7 of this title, business trusts providing for certificates to be
2 issued to beneficiaries, common trust funds, voting trusts, security
3 arrangements, liquidation trusts and trusts for the primary purpose of paying
4 debts, dividends, interest, salaries, wages, profits, pensions or employee
5 benefits of any kind, trusts created by a city or town for the payment of
6 medical insurance, health care benefits or expenses, long-term or short-term
7 disability, self insurance reserves and similar programs administered by a
8 city or town, **LEGAL DEFENSE TRUSTS** and any arrangement under which a person
9 is nominee or escrowee for another.

10 57. "Trustee" includes an original, additional or successor trustee,
11 whether or not appointed or confirmed by court.

12 58. "Ward" has the same meaning prescribed in section 14-5101.

13 59. "Will" includes a codicil and any testamentary instrument that
14 merely appoints an executor, revokes or revises another will, nominates a
15 guardian or expressly excludes or limits the right of an individual or class
16 to succeed to property of the decedent passing by intestate succession."

17 Renumber to conform

18 Page 6, between lines 9 and 10, insert:

19 "5. **"DISTRIBUTE" MEANS A PERSON WHO RECEIVES PROPERTY FROM A TRUST**
20 **OTHER THAN AS A CREDITOR OR PURCHASER."**

21 Renumber to conform

22 Page 7, line 13, after the period insert **"FOR THE PURPOSES OF THIS PARAGRAPH,**
23 **"DISABLED PERSON" MEANS AN INDIVIDUAL WHO IS DISABLED PURSUANT TO 42 UNITED**
24 **STATES CODE SECTION 1382c."**

25 Page 8, line 22 and 23, strike **"TRUST INSTRUMENT"** insert **"SETTLOR'S INTENT"**

26 Strike lines 28 through 44

27 Page 9, strike lines 1 through 8, insert:

28 "Sec. 8. Section 14-10108, Arizona Revised Statutes, is amended to
29 read:

30 **14-10108. Principal place of administration**

1 A. Without precluding other means for establishing a sufficient
2 connection with the designated jurisdiction, terms of a trust designating the
3 principal place of administration are valid and controlling if either:

4 1. A trustee's principal place of business is located in or a trustee
5 is a resident of the designated jurisdiction.

6 2. All or part of the administration occurs in the designated
7 jurisdiction.

8 B. A trustee is under a continuing duty to administer the trust at a
9 place appropriate to its purposes, its administration and the interests of
10 the beneficiaries.

11 C. Without precluding the right of the court to order, approve or
12 disapprove a transfer, the trustee, in furtherance of the duty prescribed by
13 subsection B of this section, may transfer the trust's principal place of
14 administration to another state or to a jurisdiction outside of the United
15 States AND, SUBJECT TO THE REQUIREMENTS OF SECTION 14-10818, MAY CHANGE THE
16 APPLICABLE LAW GOVERNING THE TRUST.

17 D. The trustee shall notify the qualified beneficiaries of a proposed
18 transfer of a trust's principal place of administration at least sixty days
19 before initiating the transfer. Unless a corporate trustee indicates an
20 intent to change the principal place of business in a notice to qualified
21 beneficiaries, a transfer by the corporate trustee of some of the functions
22 of a trust to another state or states is not a transfer of the trust's
23 principal place of business if the corporate trustee maintains an office in
24 this state. The notice of proposed transfer must include:

25 1. The name of the jurisdiction to which the principal place of
26 administration is to be transferred.

27 2. The address and telephone number of the new location at which the
28 trustee can be contacted.

29 3. An explanation of the reasons for the proposed transfer.

30 4. The date on which the proposed transfer is anticipated to occur.

1 5. The date, at least sixty days after the giving of the notice, by
2 which the qualified beneficiary must notify the trustee of an objection to
3 the proposed transfer.

4 E. The authority of a trustee under this section to transfer a trust's
5 principal place of administration terminates if a qualified beneficiary
6 notifies the trustee in writing of ~~an~~ A REASONABLY FOUNDED objection to the
7 proposed transfer on or before the date specified in the notice.

8 F. In connection with a transfer of the trust's principal place of
9 administration, the trustee may transfer some or all of the trust property to
10 a successor trustee designated in the terms of the trust or appointed
11 pursuant to section 14-10704."

12 Page 9, between lines 17 and 18, insert:

13 "Sec. 10. Section 14-10410, Arizona Revised Statutes, is amended to
14 read:

15 14-10410. Modification or termination of trust; proceedings for
16 approval or disapproval

17 A. In addition to the methods of termination prescribed by sections
18 14-10411, 14-10412, 14-10413 and 14-10414, a trust terminates to the extent
19 the trust is revoked or expires pursuant to its terms, no purpose of the
20 trust remains to be achieved or the purposes of the trust have become
21 unlawful, contrary to public policy or impossible to achieve.

22 B. A proceeding to approve or disapprove a proposed modification or
23 termination under sections 14-10411, 14-10412, 14-10413, 14-10414, 14-10415
24 and 14-10416, or trust combination or division under section 14-10417, may be
25 commenced by a trustee or beneficiary, ~~and a proceeding to approve or~~
26 ~~disapprove a proposed modification or termination under section 14-10411 may~~
27 ~~be commenced by the settlor~~. The settlor of a charitable trust may maintain
28 a proceeding to modify the trust under section 14-10413.

29 Sec. 11. Title 14, chapter 11, article 4, Arizona Revised Statutes, is
30 amended by adding section 14-10418, to read:

31 14-10418. Name change

1 THE TRUSTEE MAY MODIFY A TRUST AGREEMENT TO CHANGE THE NAME OF THE
2 TRUSTEE OR BENEFICIARY IF THE TRUSTEE OR BENEFICIARY'S NAME HAS BEEN LEGALLY
3 CHANGED."

4 Renumber to conform

5 Page 12, strike lines 1 through 19, insert:

6 ~~"E. For the purposes of this section, amounts contributed to an inter~~
7 ~~vivos marital trust that is treated as qualified terminable interest property~~
8 ~~under section 2523(f) of the internal revenue code or to an inter vivos~~
9 ~~marital trust that is treated as a general power of appointment trust under~~
10 ~~section 2523(e) of the internal revenue code and over which the beneficiary~~
11 ~~holds a limited power of appointment or a general power of appointment~~
12 ~~exercisable in favor of the holder's estate, or both, are not deemed to have~~
13 ~~been contributed by the settlor even if the settlor is a beneficiary of the~~
14 ~~trust following the death of the beneficiary's spouse. An irrevocable inter~~
15 ~~vivos trust for the settlor's spouse that does not qualify for the gift tax~~
16 ~~marital deduction.~~

17 E. FOR THE PURPOSES OF THIS SECTION, AMOUNTS AND PROPERTY CONTRIBUTED
18 TO THE FOLLOWING TRUSTS ARE NOT DEEMED TO HAVE BEEN CONTRIBUTED BY THE
19 SETTLOR, AND A PERSON WHO WOULD OTHERWISE BE TREATED AS A SETTLOR OR A DEEMED
20 SETTLOR OF THE FOLLOWING TRUSTS SHALL NOT BE TREATED AS A SETTLOR:

21 1. AN IRREVOCABLE INTER VIVOS MARITAL TRUST THAT IS TREATED AS
22 QUALIFIED TERMINABLE INTEREST PROPERTY UNDER SECTION 2523(f) OF THE INTERNAL
23 REVENUE CODE IF THE SETTLOR IS A BENEFICIARY OF THE TRUST AFTER THE DEATH OF
24 THE BENEFICIARY'S SPOUSE.

25 2. AN IRREVOCABLE INTER VIVOS MARITAL TRUST THAT IS TREATED AS A
26 GENERAL POWER OF APPOINTMENT TRUST UNDER SECTION 2523(e) OF THE INTERNAL
27 REVENUE CODE IF THE SETTLOR IS A BENEFICIARY OF THE TRUST AFTER THE DEATH OF
28 THE BENEFICIARY'S SPOUSE.

29 3. AN IRREVOCABLE INTER VIVOS TRUST FOR THE SETTLOR'S SPOUSE THAT DOES
30 NOT QUALIFY FOR THE GIFT TAX MARITAL DEDUCTION IF THE SETTLOR IS A
31 BENEFICIARY OF THE TRUST AFTER THE DEATH OF THE BENEFICIARY'S SPOUSE.

1 4. AN IRREVOCABLE INTER VIVOS TRUST CREATED BY A PERSON FOR THE
2 BENEFIT OF THAT PERSON'S SPOUSE, REGARDLESS OF WHETHER OR WHEN THE SPOUSE
3 ALSO CREATED AN IRREVOCABLE INTER VIVOS TRUST WITH RESPECT TO WHICH THE
4 PERSON IS A BENEFICIARY.

5 F. FOR THE PURPOSES OF SUBSECTION E, A PERSON IS A BENEFICIARY WHETHER
6 SO NAMED UNDER THE INITIAL TRUST INSTRUMENT OR THROUGH THE EXERCISE BY THAT
7 PERSON'S SPOUSE OR BY ANOTHER PERSON OF A LIMITED OR GENERAL POWER OF
8 APPOINTMENT."

9 Reletter to conform

10 Page 12, line 38, strike ", including" insert ". THESE POWERS, DELEGATIONS AND
11 FUNCTIONS MAY INCLUDE"

12 Page 14, between lines 8 and 9, insert:

13 "4. REASONABLE REMUNERATION FOR SERVICES PERMITTED PURSUANT TO SECTION
14 6-246."

15 Amend title to conform

and, as so amended, it do pass

NANCY McLAIN
Chairman

2333-bi
2/16/09
H:jmb

2333nm
02/13/2009
10:05 AM
C: jcs